

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Tri-State Christian TV, Inc.)	
)	CSR-5920-M
v.)	
)	
Blytheville TV Cable Company)	
)	
Request for Mandatory Carriage)	
of Television Station WDYR-LP)	
Dyersburg, Tennessee)	

MEMORANDUM OPINION AND ORDER

Adopted: October 24, 2002

Released: October 28, 2002

By the Deputy Chief, Policy Division, Media Bureau:

I. INTRODUCTION

1. Tri-State Christian TV, Inc., licensee of low power television station ("LPTV") WDYR-LP ("WDYR"), Dyersburg, Tennessee, filed a complaint pursuant to Sections 76.56(b)(3), 76.61(a) and 76.7 of the Commission's rules, asserting mandatory carriage rights for WDYR on Blytheville TV Cable Company's ("Blytheville") Blytheville, Arkansas cable system.¹ Blytheville filed an opposition to which WDYR replied. For the reasons discussed below we deny the complaint.

II. BACKGROUND

2. Both the Communications Act of 1934, as amended, and the Commission's rules require the carriage of "qualified" LPTV stations in certain limited circumstances.² An LPTV station that conforms to the rules established for LPTV stations in Part 74 of the Commission's rules will be considered "qualified" if: (1) it broadcasts at least the minimum number of hours required pursuant to 47 C.F.R. Part 73; (2) it adheres to Commission requirements regarding non-entertainment programming and employment practices, and the Commission determines that the programming of the LPTV station addresses local news and informational needs that are not being adequately served by full power television broadcast stations because of the geographic distance of such full power stations from the low power station's community of license; (3) complies with interference regulations consistent with its secondary status; (4) it is located no more than 35 miles from the cable system's headend and delivers to the principal headend an over-the-air signal of good quality; (5) the community of license of the station and the franchise area of the cable system were both located outside the largest 160 Metropolitan Statistical Areas on June 30, 1990, and the population of such community of license on that date did not exceed 35,000; and (6) there is no full power television broadcast station licensed to any community

¹ 47 C.F.R. §§ 76.7, 76.56(b)(3) and 76.61(a).

² 47 U.S.C. § 534(c)(1); 47 C.F.R. § 76.56(b)(3).

within the county or other political subdivision (of a State) served by the cable system.³

III. DISCUSSION

3. WDYR states that it elected mandatory carriage on Blytheville's Arkansas cable system on May 30, 2001, and maintains that Blytheville denied it must carry status on June 7, 2001 on the grounds that the Station failed to provide a good quality signal to Blytheville's principal headend.⁴ WDYR argues that Blytheville failed to properly orient its antenna during its testing of WDYR's signal strength.⁵ WDYR states further that, in any event, it has offered to provide Blytheville with a new receive antenna and any additional equipment necessary to insure that a good quality signal is delivered to Blytheville's principal headend.⁶ According to WDYR, on August 16, 2001, it informed Blytheville that it had conducted its own signal strength tests at a building adjacent to Blytheville's principal headend.⁷ WDYR asserts that the test showed a reading of -42.6 dBm, which constitutes a good quality signal when compared to the Commission's threshold of -45 dBm for UHF commercial television stations.⁸ WDYR states that on the same date it reiterated its demand for mandatory carriage and its offer to install a new receive antenna at Blytheville's principal headend.⁹ WDYR notes that on August 30, 2001, Blytheville denied mandatory carriage alleging that the Station's signal was still deficient as indicated by re-testing conducted on August 24, 2001.¹⁰ WDYR further notes that between August 30, 2001 and April 25, 2002 it exchanged several letters with Blytheville in an effort to have Blytheville conduct further signal strength testing with the Station's representative(s) present, and to be allowed to install a new antenna on Blytheville's facilities.¹¹ WDYR filed the instant must carry complaint on June 13, 2002.

4. In is opposition, Blytheville argues that the Commission should dismiss WDYR's complaint because it was untimely filed.¹² Blytheville argues that despite its two clear denials on June 7 and August 30, 2001, WDYR did not file the instant complaint until June 13, 2002, which is more than 60 days following Blytheville's August 30, 2001 denial.¹³ Blytheville argues that the Station cannot claim that it is justified in filing a late complaint due to ongoing negotiations with Blytheville because no such negotiations occurred between the parties.¹⁴ Blytheville maintains that even if the instant complaint is considered on its merits, the Station does not qualify for mandatory carriage rights because it does not provide Blytheville's principal headend with a good quality signal as required by Sections 76.55(d)(4) and 76.55(c)(3) of the Commission's rules.¹⁵ In support, Blytheville states that it conducted signal strength testing on several occasions: August 24, 2001 (with readings of -76.4 dBm to -77.4 dBm); November 25, 2001 (with readings of -80.5 dBm to -81.1 dBm); December 20, 2001 (with readings of

³ 47 U.S.C. § 534(h)(2); 47 C.F.R. § 76.55(d).

⁴ Complaint at 1, 3 and Exhibit 2.

⁵ Complaint at 3, Exhibit 2.

⁶ Complaint at 3, Exhibit 2.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ Complaint at 3-6, Exhibit 2.

¹² Opposition at 1-2.

¹³ *Id.* at 2-3.

¹⁴ *Id.* at 3.

¹⁵ *Id.* at 4; see 47 C.F.R. §§ 76.55(d)(4) and 76.55(c)(3).

-71.9 dBm to -74.3 dBm); and on February 21, 2002 (with readings between -48.7 dBm to -49.1 dBm).¹⁶ Blytheville asserts that WDYR fails to understand that as a low power television station it cannot cure its signal quality deficiency by providing the cable operator with additional equipment, such as a new receive antenna.¹⁷ Blytheville maintains further that its signal strength testing is consistent with “Commission-mandated methodology.”¹⁸ In its reply, WDYR reiterates its previous arguments of entitlement to mandatory carriage on Blytheville’s cable system emphasizing its desire for joint signal strength measurements, as well as its offer to install a new receive antenna at Blytheville’s principal headend.¹⁹

5. We deny WDYR’s complaint. The Commission will accept must carry complaints filed pursuant to Section 76.61(a) if they are filed within 60 days after the denial by a cable operator of a request for mandatory carriage. We find that WDYR’s August 16, 2002 letter made a clear and unequivocal demand for mandatory carriage of the Station’s signal, thus triggering the 30-day period for Blytheville either to commence carrying WDYR or provide a written response denying carriage. Blytheville’s August 30, 2001 denial triggered the 60-day deadline for WDYR to file a must carry complaint with the Commission. Accordingly, we find that the June 13, 2002 complaint was untimely filed and must be denied. The record does not demonstrate ongoing negotiations after August 30, 2001.

6. We note that WDYR has submitted a new must carry election letter for the period beginning January 1, 2003. We believe it appropriate to address several matters that arose in the record in this proceeding even though we deny WDYR’s complaint as untimely because there is a possibility that these matters may again be presented for our consideration. First, our review of the signal strength tests conducted by Blytheville shows that it failed to follow generally accepted engineering practices. Specifically, on February 21, 2002, Blytheville failed to conduct a 24-hour test after its receive antenna was correctly oriented. The results of February 21, 2002 found a signal level of -49.1 dBm and -48.7 dBm for WDYR. When the initial readings are between -51 dBm and -45 dBm, as is the case here, good engineering practices require that readings be taken over a 24-hour period with measurements not more than four hours apart to establish reliable results.²⁰ Second, with regard to WDYR’s offer to install a new receive antenna on Blytheville’s principal headend, we note that, unlike full power commercial stations, LPTV stations, such as WDYR, are not allowed by the Communications Act or the Commission’s rules to cure a signal deficiency with additional specialized equipment.²¹

¹⁶ *Id.* at 4-5.

¹⁷ Opposition at 5-6.

¹⁸ *Id.* at 6.

¹⁹ Reply at 2-4.

²⁰ See *Implementation of the Cable Television Consumer Protection and Competition Act of 1992 – Broadcast Signal Carriage Issues*, 9 FCC Rcd 6723, 6736 (1994).

²¹ *Implementation of the Cable Television Consumer Protection and Competition Act of 1992, Broadcast Signal Issues*, 8 FCC Rcd 2965, 2991 (1993).

IV. ORDERING CLAUSES

7. Accordingly, **IT IS ORDERED**, that the complaint filed by Tri-State Christian TV, Inc. **IS DENIED** pursuant to Section 614(h) of the Communications Act, as amended, 47 U.S.C. § 534.

8. This action is taken pursuant to authority delegated by Section 0.283 of the Commission's rules.²²

FEDERAL COMMUNICATIONS COMMISSION

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²² 47 C.F.R. § 0.283.